

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

Case No. 22-40412 (ESS)

PRODUCE DEPOT USA LLC,

Chapter 11

Debtor.

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**MOTION OF THE UNITED STATES TRUSTEE FOR ORDER SHORTENING
NOTICE PERIOD, ESTABLISHING OBJECTION DEADLINE, AND
SCHEDULING HEARING ON THE UNITED STATES TRUSTEE’S MOTION
PURSUANT TO 28 U.S.C. §§ 1406, 1408 AND FED. R. BANKR. P. 1014(a)(1),
TO TRANSFER VENUE OF THIS CASE TO DISTRICT OF NEW JERSEY OR,
IN THE ALTERNATIVE, THE SOUTHERN DISTRICT OF NEW YORK.**

TO: THE HONORABLE ELIZBETH S. STONG,
UNITED STATES BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2, moves under 11 U.S.C. § 105(a), Federal Rule of Bankruptcy Procedure Rule 9006(c), and Rule 9077-1(c) of the Local Bankruptcy Rules for the Eastern District of New York (“Local Rules”), for the entry of an order shortening notice, setting an objection deadline, and scheduling a hearing on the United States Trustee’s Motion, Pursuant to 28 U.S.C. §§ 1406(a), 1408 and Fed. R. Bankr. P. 1014(a)(1) To Transfer this Case to the District of New Jersey, Or, In the Alternative, Southern District of New York (the “Transfer Motion”). In support, the United States Trustee states as follows:

INTRODUCTION

The United States Trustee seeks a hearing on the Transfer Motion on shortened notice because the Debtor, who has operated under the protection of chapter 11 in this district for over eleven weeks, has failed to substantiate that it is appropriately venued in the Eastern District of

New York, and has not provided sufficient proof to meet the criteria set forth in 28 U.S.C. §§ 1046(a), 1408. In addition, the Debtor has not its Local Rule 1007-4 Affidavit that would, in theory, provide the Court, the creditors and United States Trustee information regarding its background and nature of its business and would presumably reveal that venue is not proper in this District. The United States Trustee, therefore, requests that the Court shorten notice of the Transfer Motion, set an objection deadline for parties to file objections, and schedule a hearing on less than the 14 or 21 days' notice required under Bankruptcy Rule 2002.

CAUSE EXISTS FOR SHORTENED NOTICE ON THE TRANSFER MOTION

As more fully set forth in the Transfer Motion filed on May 27, 2022, the United States Trustee is seeking the immediate transfer of the case to another venue. The immediate transfer of this case to another venue is based upon 28 U.S.C. §§ 1406 (a), 1408 and Fed. R. Bankr. P. 1014(a), and any delay could result in the inappropriate adjudication of the case in this District. Based on the foregoing, the United States Trustee requests a hearing on shortened notice on the Transfer Motion.

APPLICABLE AUTHORITY

Federal Rules of Bankruptcy Procedure 2002, 9006 and 9007 permit the shortening of notice and scheduling of an objection deadline and hearing as set forth herein. Bankruptcy Rule 2002(a) provides generally for 14 or 21 days' notice of motions such as the Transfer Motion. Fed. R. Bankr. P. 2002(a). The applicable time period, however, may be modified further if the court "for cause shown" shortens the time or directs another method of giving notice. Fed. R. Bankr. P. 2002(a)(2) (general rule); Fed. R. Bankr. P. 9006(c) (quotation). In addition, Bankruptcy Code section 105(a) provides that the Court, "may issue an order . . . necessary or appropriate to carry out the provisions of [the Bankruptcy Code.] 11 U.S.C. §

105(a). Shortening time is also expressly contemplated in and permitted by Local Rule 9077-1(c).

SERVICE OF TRANSFER MOTION

The United States Trustee requests that the Court permit the United States Trustee to serve the Order Shortening Time and the Transfer Motion, by overnight mail, upon the Debtor, counsel for the Debtor, all creditors and any party that has filed a notice of appearance in the case. The United States Trustee requests that service by the United States Trustee on the parties set forth above, be deemed good and sufficient notice of the Transfer Motion.

CONCLUSION

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order (i) shortening the notice required for the Trustee Motion, (ii) establishing an objection deadline, (iii) scheduling the hearing on the Trustee Motion on less than 14 or 21 days' notice, and (iv) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 27, 2022

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE FOR REGION 2

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